

1 CAMPEAU GOODSSELL SMITH, L.C.
WILLIAM J. HEALY, #146158
2 440 N. 1st Street, Suite 100
San Jose, California 95112
3 Telephone: (408) 295-9555
Facsimile: (408) 295-6606
4

5 ATTORNEYS FOR
The Saunders Company
6
7

8 UNITED STATES BANKRUPTCY COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 San Jose Division

12 In re:) Case No. 14-51043
13 Louis Charles Rocha,)
14 Debtor.) CHAPTER 13
15) R.S. No.: CGS-01
16) DECLARATION OF FRANK H.
17) SAUNDERS RE: MOTION FOR RELIEF
18) FROM AUTOMATIC STAY
19)
20) Date: April 2, 2014
21) Time: 3:00 p.m.
22) Location:
United States Bankruptcy Court
Rm. 3070
280 South 1st St.
San Jose, CA 95113
Judge: Honorable Charles Novack

23 I, Frank H. Saunders, do hereby declare:

24 1. At all times herein I was over the age of eighteen. If called to testify as to the matters
25 stated herein I would do so in an honest and competent manner. By way of this declaration I
26 do not intend to waive any privileges, including the attorney client and work product
27 privileges.

28 2. I submit this declaration in support of a Motion For Relief From Stay by The Saunders

1 Company ("TSC" or "Moving Party").

2 3. I make this declaration of my own personal knowledge except as to those matters upon
3 which I am informed and believe to be true, based on my duties with The Saunders
4 Company, review and familiarity with business books and records of The Saunders Company
5 associated with Debtor and/or Debtor's spouse, personal interactions and dealings with the
6 Debtor and/or Debtor's spouse, handling of financial transactions with, or related to, the
7 Debtor and/or Debtor's spouse, and handling matters related to the loans and deeds of trust
8 initiated, managed, and/or process between The Saunders Company, Debtor, and/or Debtor's
9 spouse.

10 4. I am authorized by The Saunders Company to make this declaration on its behalf.

11 5. Frank Saunders of The Saunders Company has been a licensed real estate broker and
12 has been making real estate loans since 1980.

13 6. Debtor's Relationship to The Saunders Company.

14 7. On November 20, 2007 TSC, as lender, and Debtor Louis C. Rocha ("Debtor")¹ and
15 Gwen S. Rocha, husband and wife as joint tenants, as borrowers, entered into a Note Secured
16 By Deed of Trust Straight Note whereby TSC lent the borrowers \$525,000 at ten and one
17 half percent (10.5%) with payments of \$4,593.75 due on the 1st of the month beginning on
18 January 1, 2008 and continuing through December 1, 2010 at which time the unpaid balance,
19 including principal and interest, becomes due and payable ("Promissory Note"). On
20 December 1, 2009 and on December 1, 2010 Modification of Note Agreements were entered into
21 whereby, among other things, the interest rate was reduced to seven percent (7%) and the
22 maturity date was extended to December 1, 2012. The Promissory Note bears interest at fifteen
23 percent (15%) after maturity. A true and correct copy of the Promissory Note and related
24 modifications are attached hereto as Exhibit A.

25 8. The Promissory Note was secured by a Deed of Trust And Assignment of Rents
26 recorded with the Monterey County Recorder on November 29, 2007
27 Document#2007089381) ("Deed of Trust") relative to 109 Pearl Street, King City, CA

28 _____
¹Also known as Louis C. Rocha and Louie C. Rocha.

1 (A.P.N. 026-241-002), 304 + 306 S. First Street, King City, CA (A.P.N. 026-241-008)
2 (“Subject Property”), 107 Pearl Street, King City, CA (A.P.N. 026-241-009), and 324 S. First
3 Street, King City, CA (A.P.N. 026-242-001). A true and correct copy of the Deed of Trust is
4 attached hereto as Exhibit B.

5 9. The Deed of Trust required, among other things, for the borrowers to maintain the
6 properties, maintain insurance, and pay real property taxes. Debtor did not and does not
7 reside at the Subject Property. Prior to Debtor’s current bankruptcy TSC had foreclosed on
8 all collateral except the Subject Property.

9 10. On September 23, 2011 Debtor’s first Chapter 13 Bankruptcy, In re Louis Rocha,
10 U.S.B.C. (ND CA) #11-58862 was filed (“First Bankruptcy”). The First Bankruptcy did not
11 include any reference to TSC, including on the Creditor Matrix. The First Bankruptcy was
12 dismissed on October 19, 2011 for Debtor’s failure to file schedules and failure to comply
13 with the court’s order to file schedules. TSC was not aware of the First Bankruptcy until it
14 received belated notice of the Second Bankruptcy (defined below).

15 11. On July 10, 2012 Debtor’s second Chapter 13 Bankruptcy, In re Louie Charles Rocha,
16 U.S.B.C. (ND CA) #12-55134, was filed (“Second Bankruptcy”). Debtor’s Second
17 Bankruptcy, like the First Bankruptcy, was filed without any reference to TSC and without
18 notice to TSC. On August 6, 2012 Debtor filed an amendment to his Creditor Matrix adding
19 TSC as a creditor, on August 17, 2012 TSC received notice of Debtor’s Second Bankruptcy
20 via certified mail, and on August 23, 2012 Debtor filed his schedules, Creditor Matrix, and
21 Chapter 13 Plan—none of which made any references to TSC or the related Promissory Note,
22 Deed of Trust, real properties, Trustee’s Deeds on all but the Subject Property, and/or
23 pending unlawful detainer action.

24 12. Current Status of Promissory Note, Deed of Trust, and Subject Property.

25 13. The Promissory Note matured on December 1, 2012. Debtor has not paid on the
26 Promissory Note since January 2012. As of April 1, 2014 the outstanding balance on the
27 Promissory Note will be \$128,308.79. A true and correct copy of a Beneficiary’s Demand
28

1 Plus Trustee's Fees and Expenses showing the outstanding balanced owed is attached hereto
2 as Exhibit C.

3 14. Based on TSC's research and familiarity with the Subject Property and general real
4 estate market in King City, California and the outstanding balance due and owing the Subject
5 Property has little, if any, equity.

6 15. Debtor has not paid the required real property taxes on the Subject Property for
7 2011/2012, 2012/2103, and 2013/2014. According to the Monterey County Tax Assessor the
8 total outstanding balance through March 31, 2014 is \$4,151.75. A true and correct copy of a
9 March 11, 2014 Tax Bill from the County of Monterey's Tax Assessor is attached hereto as
10 Exhibit D.

11 16. Debtor does not maintain the required insurance on the Subject Property.

12 17. Debtor does not maintain the Subject Property. The Subject Property is subject to
13 outstanding violations from King City, Debtor was sent a First Notice of Violation on
14 October 6, 2010, a Second Notice of Violation on November 22, 2010, a Final Notice of
15 Violation on September 19, 2011, and a Request to Appear on January 21, 2014 wherein the
16 City Manager placed the matter on the January 28, 2014 agenda and requested the property
17 owner appear before the City Council on January 28, 2014 in an effort to clear these
18 violations. TSC believes these violations have not been cleared. A true and correct copy of
19 the January 21, 2014 letter requesting appearance is attached hereto as Exhibit E.

20 18. In addition, the building on the Subject Property sustained approximately \$20,000
21 in damages as a result of a motor vehicle crashing into the building. This damage included
22 damage to the main structural member, a door, large window and the brick facade. This
23 damage has not been repaired. TSC understands that Debtor has not submitted pictures or an
24 estimate of damages to the insurer for the motorist/vehicle owner. True and correct copies of
25 the Traffic Collision Report #13-1053 and photos of the property damages are attached
26 hereto as Exhibit F.

27 19. In addition, there is also significant damage done to the back wall as a result of a forklift
28

1 that has not been repaired and there are numerous other broken windows and interior damage
2 to the building.

3 20. A Notice of Trustee Sale was recorded with the Monterey County Recorder on February
4 14, 2014 (Document#2014006783). The trustee's sale was scheduled for March 12, 2014.

5 21. Attached hereto are true and correct copies of the following referenced documents:

6 Exhibit A: Promissory Note

7 Exhibit B: Deed of Trust

8 Exhibit C: Beneficiary's Demand Plus Trustee's Fees and Expenses

9 Exhibit D: March 11, 2014 Tax Bill

10 Exhibit E: January 21, 2014 Request to Appear-to address outstanding violations

11 Exhibit F: Traffic Collision Report #13-1053 and related property damage photos

12 22. Other documents referenced herein and related to the motion are available but not
13 attached to avoid attaching voluminous and extraneous documents and privileged and
14 confidential information.

15 23. The nature and extent of senior and junior encumbrances are now clear. The records of
16 The Saunders Company indicated that at the time the Promissory Note and Deed of Trust
17 were issued The Saunders Company held first positions on all properties, except the Subject
18 Property where it held a second position junior to Washington Mutual (transferred to
19 Chase)("Chase DOT") in the amount of \$317,000. When The Saunders Company previously
20 foreclosed on some of the collateral listed in the Deed of Trust it held the Subject Property
21 out because it was encumbered by the Chase DOT. The Saunders Company bought out the
22 Chase DOT's position to place itself in first position on the Subject Property.

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct and executed this 17th day of March 2014 in Monterey,
25 California.

26 /s/ Frank H. Saunders

27 Frank H. Saunders